

USE OF DISCLAIMERS DURING PROBATE OR TRUST ADMINISTRATION

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Larry R. Bray
Attorney & Counselor at Law

Please visit our website at www.WisemanBray.com for more information about estate planning strategies as well as additional information about other services provided by our firm.

Due to the current uncertainty surrounding the future of the federal estate tax law, disclaimers offer the beneficiaries of an estate or trust an opportunity to adjust estate plans to take into account possible changes in the law not contemplated in the documents. Disclaimers also allow for correcting errors after the death of the testator, minimizing death tax, maximizing the marital deduction and offering a method to resolve family conflicts over inheritances.

A disclaimer permits a person to refuse a property right which has been conferred upon him by another. In simple terms, it permits a beneficiary to say, with regard to a gift or bequest, "I don't want it, don't give it to me!"

However, unless a disclaimer is made in conformity with certain federal tax law requirements, it may be treated as a taxable gift for federal

gift tax purposes. So, it is important to understand the steps which must be taken in order to avoid adverse gift tax consequences. A proper disclaimer, which for tax purposes is called a "qualified disclaimer", must meet a number of specific tests under the Internal Revenue Code and accompanying Regulations. A qualified disclaimer must be (1) irrevocable and unqualified, (2) in writing and signed by the person making it, (3) received by the transferor or personal representative of the deceased transferor's estate within 9 months of the day on which the interest is created, (4) made prior to accepting any benefit, (5) made without consideration, (6) made without any attempt to direct the redistribution of the disclaimed property, and (7) effective under local law.

In many cases, a beneficiary will accept

the benefits of the property or will not execute the disclaimer within 9 months eliminating a use of a disclaimer. Therefore, it is important that a beneficiary know (in advance) the requirements of a qualified disclaimer if it is anticipated that a disclaimer will be used.

Qualified disclaimers can be used to correct errors in existing estate plans and can be effectively used in post-mortem planning where lifetime planning was either too little or too late.

Because the rules governing qualified disclaimers are very technical and affect many different tax laws, it is important that a beneficiary who is considering making a disclaimer obtain proper legal counsel.

If you have questions about qualified disclaimers or are interested in making a qualified disclaimer of property, please contact our office.

EXPANSION OF PROBATE & TRUST ADMINISTRATION PRACTICE

There are two options by which a person can direct the transfer of his or her property at death: (1) a Last Will and Testament or (2) a Revocable Living Trust. These options have very different types of administration at death. The Last Will and Testament-centered plan requires a Probate Court administration, while a Revocable Living Trust-centered plan avoids the Probate process altogether.

Probate and trust administration has always been an important part of our prac-

tice. However, more recently the demand for our services in this area has greatly increased. We have discovered that more and more clients are looking for experienced attorneys to assist them through the difficult process of administering the estate of a deceased loved one.

As a firm, we have substantial experience helping clients through this process. Therefore, we have decided to expand our probate and trust administration practice.

Larry Bray and Lindsay Jones will continue to assist clients, their

families and their advisors through the estate administration at the death of a family member. Jay Adcox, who works in our Nashville office, will continue to represent clients in the Nashville area through the probate and trust administration process. In addition, Lang Wiseman and Chris Patterson will now also provide assistance to clients with these matters.

Please let us know if we can provide legal services to you in regards to estate administration.



Lang Wiseman
Attorney & Counselor at
Law

Business Litigation
Construction Disputes
Products Liability
Wrongful Death
Probate



Chris Patterson
Attorney & Counselor at
Law

Litigation
Probate
Products Liability
Wrongful Death

FIRM NEWS

We are pleased to announce that Janet Hill has joined our firm as our office manager.

Janet also has substantial experience assisting clients with the funding of assets to revocable living trusts, which is the transfer of ownership

of certain assets to the revocable living trust and the coordination of beneficiary designations with the overall estate plan.

She also provides administrative assistance during the estate administration process, which will

assist us as we expand our services in probate and trust administration.

Because of Janet's flexibility with job tasks and her broad experience in estate planning, she will be a great asset to our firm.

Disclaimer We are obligated by ethical rules to state that this Newsletter is an advertisement. Certifications of Specialization are available to Tennessee lawyers in many areas of practice, including the areas of Civil Trial, Criminal Trial, Business Bankruptcy, Consumer Bankruptcy, Creditor's Rights, Medical Malpractice, Legal Malpractice, Accounting Malpractice, Elder Law, Estate Planning and Family Law. Listing of related or included practice areas in this Newsletter does not constitute or imply a representation of certification of specialization.

Pursuant to recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

WISEMAN BRAY PLLC
1665 Bonnie Lane
Suite 106
Memphis, Tennessee 38016
901.372.5003 voice
901.383.6599 fax